Filed 5/5/06

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. STEVEN ARTHUR REYNOLDS, Defendant and Appellant.	E036242 (Super.Ct.No. RIC369237) O P I N I O N

APPEAL from the Superior Court of Riverside County. Carl E. Davis, Judge. (Retired judge of the San Bernardino Superior Court, assigned by the Chief Justice pursuant to art. VI, § 6, of the Cal. Const.) Affirmed.

Chris Truax, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Megan Beale, Bradley A. Weinreb and Shari A. Lawson, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Steven Arthur Reynolds appeals from an order committing him to the State Department of Mental Health for treatment in a secured facility for two years, after a jury determined he was a sexually violent predator (SVP) within the meaning of the Sexually Violent Predator Act (SVPA). (Welf. & Inst. Code, § 6600 et seq.)[1] Defendant contends: (1) the trial court erroneously denied his motion to dismiss the People's original commitment petition, because he had only one, not two, prior qualifying convictions for purposes of the SVPA; (2) the trial court erroneously refused to follow "existing law" at the time his motion to dismiss was originally heard; (3) the admission of testimonial hearsay statements in police and probation reports, through the testimony of the People's expert psychologists and other witnesses, violated his due process right to confrontation and was prejudicial; and (4) the trial court prejudicially erred in allowing one of the prosecution's expert witnesses to express opinions on "legal issues," including whether defendant had committed sexually violent predatory acts on two or more victims and was likely to reoffend. Although we conclude that the trial court erred in allowing certain expert testimony, we find the errors harmless and affirm the order of commitment.

OVERVIEW OF THE SVPA

In enacting the SVPA, "the Legislature expressed concern over a select group of criminal offenders who are extremely dangerous as the result of mental impairment, and

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

who are likely to continue committing acts of sexual violence even after they have been punished for such crimes. The Legislature indicated that to the extent such persons are currently incarcerated and readily identifiable, commitment under the SVPA is warranted immediately upon their release from prison. . . ." (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1143-1144.)

At trial, the plaintiff bears the burden of proving beyond a reasonable doubt that the defendant is an SVP. (§ 6604; *Hubbart v. Superior Court, supra,* 19 Cal.4th at p. 1147.) An SVP is "a person who has been convicted of a *sexually violent offense* against two or more victims and who has a *diagnosed mental disorder* that makes the person a danger to the health and safety of others in that it is *likely* that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a), italics added; *People v. Vasquez* (2001) 25 Cal.4th 1225, 1231.)

The SVPA requires a determination that the defendant is likely to commit "sexually violent *predatory* criminal behavior." (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1186-1187.) A defendant is "likely [to] engage in sexually violent [predatory] criminal behavior" if he or she "is found to present a *substantial danger*, that is, *a serious and well-founded risk,* of committing such crimes if released from custody." (*People v. Roberge* (2003) 29 Cal.4th 979, 982, 988, fn. omitted.) "Evidence of the person's amenability to voluntary treatment, if any is presented, is relevant to the ultimate determination whether the person is likely to engage in sexually violent predatory crimes if released from custody." (*Id*. at p. 988, fn. 2.)

"[W]here the requisite SVP findings are made, 'the person shall be committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health . . . .'" (*Hubbart v. Superior Court, supra,* 19 Cal.4th at p. 1147.) "Confinement generally cannot exceed two years unless a new petition is filed and an extended commitment is obtained from the court." (*Ibid.*)

FACTUAL BACKGROUND

In 1980, defendant pled no contest to one count of committing lewd and lascivious acts on a child under age 14 (Pen. Code, § 288, subd (a)) and one count of oral copulation with a child under age 14 (Pen. Code, § 288a, subd. (c)). The crimes occurred in 1979 when defendant was 20 years old, and involved a single victim, a five-year-old boy named Jeffrey. According to police and probation reports and other records, defendant had the boy fondle defendant's penis. Defendant then pulled the boy's pants down, fondled the boy's penis, and orally copulated the boy. Another boy, Kevin, then age five, witnessed the crimes.

A third boy, Lloyd, then age nine, reported that defendant had been exhibiting his penis and masturbating in front of young boys in the area for 18 months to two years. Defendant admitted to police and admitted at trial that he orally copulated Jeffrey. For his 1980 convictions involving Jeffrey, defendant was committed to Patton State Hospital (PSH) as a mentally disordered offender. At PSH, defendant was diagnosed with pedophilia, and was not responsive to treatment. Following his release from PSH,

defendant was placed on probation for five years. As part of his probation, he was ordered not to associate with minors under age 18.

In 1984, when defendant was 25 years old, his probation was extended after he masturbated in a tree house in the presence of two young boys. Defendant did not touch the boys, but asked one of the boys to touch him. The boy declined. As a result of this incident, defendant was not convicted of any crimes or returned to PSH.

In 1993, defendant pled guilty to four counts of lewd and lascivious conduct with a child under age 14. (Pen. Code, § 288, subd. (a).) The crimes were committed in 1992 against a six-year-old boy named Joseph. Using a motorized cart, defendant took Joseph to a trash dumpster area in a trailer park in which the boy lived and orally copulated the boy approximately seven times. On two occasions, he put a plastic dildo in the boy's anus. Defendant admitted to police that he orally copulated the boy and put a dildo in the boy's anus. For his 1993 convictions involving Joseph, defendant was sentenced to 14 years in prison.

Also in 1993, three other children reported that defendant had committed similar crimes against them in 1992. Joseph's half sister, nine-year-old Natalie, reported that defendant rubbed his penis against her vagina on two occasions. On one occasion, he ejaculated. Defendant admitted to police that he masturbated in front of the girl. A nine-year-old boy, John, claimed that defendant pulled his pants down. And 12-year-old Patrick, a cousin to Joseph and Natalie, reported that defendant fondled him through his pants.

In the 1992 incidents involving Natalie, John, and Patrick, defendant used his golf cart to lure the children to secluded locations, just as he had in the 1992 incidents involving Joseph. All four of the children lived in the same trailer park. Defendant was originally charged with crimes involving Natalie, John, and Patrick, but these charges were dismissed when defendant pled guilty to four counts of violating Penal Code section 288, subdivision (a), based on the incidents involving Joseph.

On December 13, 2000, defendant was released on parole. On June 13, 2001, his parole officer saw a child's bicycle for sale in the front yard of defendant's home, where defendant was living with his mother and his boyfriend, Robert. The parole officer ordered defendant to get rid of the bicycle, but defendant did not comply. Defendant testified that he did not comply because the bicycle did not belong to him. Robert and defendant's mother also testified that the bicycle did not belong to defendant, but belonged to Robert's niece. Defendant's mother placed the bicycle in the front yard and had been trying to sell it. On June 15, 2001, defendant was arrested for violating the terms of his parole and was sent to Atascadero State Hospital (ASH). While at ASH, defendant did not take part in any treatment programs.

Defendant was found in possession of child pornography while in prison in 1997 and again while at ASH in separate incidents in 2001 and 2003. He was found masturbating with another male patient at ASH in 2002, and on another occasion was found loitering in the shower looking at other undressed males.

PROCEDURAL HISTORY

On January 4, 2002, the Riverside County District Attorney originally petitioned the superior court to commit defendant as an SVP. Trial commenced on June 24, 2004. On July 9, 2004, a jury determined that defendant was an SVP, and defendant was ordered committed to the State Department of Mental Health for treatment in a secured facility for a period of two years.

Before trial, defendant filed a motion to dismiss the petition on the ground he had only one, not two, qualifying prior convictions for purposes of the SVPA. He argued that his 1980 no contest plea and resulting conviction was not a prior conviction for purposes of the SVPA. The trial court denied the motion. He renewed the motion shortly before trial and during trial in June and July 2004. The motion was again denied.[2]

The People called Dr. Romanoff, a forensic psychologist, and Dr. Harry Goldberg, a clinical psychologist, as expert witnesses. Both testified that defendant's 1980 and 1993 convictions were qualifying prior convictions, because the underlying incidents involved substantial sexual contact. Both experts also opined that defendant suffered from a diagnosed mental disorder, pedophilia, and was likely to reoffend.

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[2] On July 31, 2003, defendant filed a petition for a writ of habeas corpus in the trial court on the ground the original commitment petition should be dismissed because his 1980 no contest plea and conviction was not a qualifying prior conviction. The trial court denied the petition on August 4, 2003. Defendant then petitioned this court for a writ of mandate directing the trial court to dismiss the petition. On November 3, 2003, this court summarily denied the petition for a writ of mandate (E034628).

Defendant called Dr. Raymond Anderson, a clinical psychologist. He testified that there was insufficient evidence to lead him to conclude that defendant was a pedophile. He further opined that defendant did not meet the SVP criteria and was unlikely to reoffend.

Dr. Anderson noted that defendant was borderline mentally retarded and easily influenced or manipulated by other patients at ASH, did not suffer from either narcissistic personality disorder or antisocial personality disorder, had a good attachment history, and understood the harmfulness of his past conduct. He concluded that defendant did not have a strong drive to molest children but was, rather, a situational offender.

DISCUSSION

A. *Defendant's 1980 No Contest Plea and Conviction is a Qualifying Prior Conviction*

Defendant contends that the trial court erroneously denied his motion to dismiss the original commitment petition, because he had only one qualifying prior conviction involving a single victim, namely, his 1993 conviction involving Joseph. He argues that his 1980 conviction is not a qualifying prior conviction, because it is based on a 1980 no contest plea.

In 1980, at the time defendant entered his no contest plea, former clause (3) of Penal Code section 1016 barred the use of a no contest plea and its factual basis "as an admission [against the defendant] in *any civil suit* based upon or growing out of the act upon which the criminal prosecution is based." (Stats. 1976, ch. 1088, § 1, pp. 4930-4931, italics added.) In 1982, Penal Code section 1016, clause (3) was amended to provide that the "legal effect" of a no contest plea "to a crime punishable as a felony,

shall be the same as that of a plea of guilty for all purposes. . . ." (Stats. 1982, ch. 390, § 3, p. 1725; *Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 286.) Defendant argues that SVPA proceedings are "civil suits" within the meaning of former clause (3) of Penal Code section 1016; thus, his 1980 no contest plea and conviction were inadmissible against him in these proceedings and cannot serve as the basis of a qualifying prior conviction.

While this appeal was pending, the state Supreme Court decided this issue against defendant in *People v. Yartz* (2005) 37 Cal.4th 529 (*Yartz*). The court held that former clause (3) of Penal Code section 1016 does not bar the use of pre-1983 no contest pleas and resulting convictions in SVPA proceedings, because SVPA proceedings are not civil actions; instead, they are special proceedings of a civil nature, and the two are mutually exclusive.[3]

B. *The Trial Court Properly Refused to Follow the Court of Appeal's Decision in Yartz in Denying Defendant's Motion to Dismiss the Commitment Petition*

Notwithstanding the state Supreme Court's decision in *Yartz*, defendant contends that his motion to dismiss the commitment petition was erroneously denied, because the

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[3] The *Yartz* court expressly agreed with the observation of the court in *People v. Superior Court (Cheek)* (2001) 94 Cal.App.4th 980, 988, that "'an SVPA commitment proceeding is a special proceeding of a civil nature, because it is neither an action at law nor a suit in equity, but instead is a civil commitment proceeding commenced by petition independently of a pending action.'" (*Yartz, supra,* 37 Cal.4th at pp. 536-537.) The court disapproved of *Leake v. Superior Court* (2001) 87 Cal.App.4th 675, 680, "[t]o the extent it suggests that an SVPA proceeding is a civil action . . . ." (*Yartz, supra,* at p. 537.)

trial court "willfully refused to apply *then-existing law*" at the time his motion was first heard and decided on September 15, 2003. The "then-existing law," defendant claims, was the Third District Court of Appeal's decision in *Yartz*. The appellate court in *Yartz* concluded that pre-1983 no contest pleas and resulting convictions are *inadmissible* to establish qualifying prior convictions in SVPA proceedings.[4]

As defendant notes, the appellate court's decision in *Yartz* was published and final in the appellate court when his motion to dismiss was heard on September 15, 2003, and the state Supreme Court review had not yet been granted (although review was later granted on September 24, 2003).[5] In addition, no published decisional authority was in conflict with the appellate court's decision in *Yartz*, as of September 15, 2003. For these reasons, defendant contends that the trial court was bound to follow the appellate court's

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[4] As noted, the state Supreme Court in *Yartz* concluded that SVPA proceedings are *not* civil suits but are special proceedings of a civil nature. (*Yartz, supra,* 37 Cal.4th at pp. 536-537, 542.) Thus, the court concluded that pre-1983 no contest pleas and resulting convictions are admissible to establish qualifying prior convictions in SVPA proceedings. The appellate court in *Yartz* reached the opposite conclusion: SVPA proceedings *are* civil suits within the meaning of the pre-1983 version of former clause (3) of Penal Code section 1016. Thus, the appellate court held that pre-1983 no contest pleas and resulting convictions are *inadmissible* to establish qualifying prior convictions in SVPA proceedings.

[5] The appellate court's decision in *Yartz* was issued and certified for publication on June 30, 2003. It became final in the appellate court 30 days later. (Cal. Rules of Court, rule 24(b).) On August 18, defendant's motion to dismiss the commitment petition first came on for hearing. At that time, the People represented that the Attorney General was seeking review of the appellate court's decision in *Yartz*. Over defense counsel's objection, the trial court continued the hearing "to wait and see what happens on the petition for review." At the continued hearing on September 15, the trial court denied the motion.

decision in *Yartz* on September 15, 2003. He argues that the principle of stare decisis as articulated in *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 (*Auto Equity Sales*) (courts exercising inferior jurisdiction must accept the law as declared by courts exercising superior jurisdiction) compels this conclusion.

Defendant is incorrect. As we explain, the state Supreme Court's decision in *Yartz* applies retroactively. Thus, the law at the time defendant's motion to dismiss was heard on September 15, 2003, was what the state Supreme Court *later* said it was when it issued its decision in *Yartz* on December 5, 2005. As we further explain, our conclusion is entirely consistent with the principle of stare decisis as articulated in *Auto Equity Sales*.

In *Auto Equity Sales*, the appellate department of a superior court disagreed with the reasoning of an appellate court decision and refused to follow it. (*Auto Equity Sales, supra,* 57 Cal.2d at pp. 454, 456.) The court in *Auto Equity Sales* concluded that the superior court acted in excess of its jurisdiction because, under the doctrine of stare decisis, lower courts are bound by and must follow the decisions of higher courts. (*Id*. at p. 455.) Otherwise, the court explained, the doctrine of stare decisis "makes no sense." (*Ibid*.)

Significantly, however, the *Auto Equity Sales* court did not determine whether the appellate court decision that the superior court refused to follow was correct or incorrect. (*Auto Equity Sales, supra,* 57 Cal.2d at p. 457.) Moreover, the court noted that, if the appellate court's decision was later overruled, any new decision would apply only prospectively and not retroactively, because the parties would have reasonably relied on the Court of Appeal's earlier decision. (*Ibid*.) Here, in contrast, and as explained below,

the state Supreme Court's decision in *Yartz*, which overruled the appellate court's decision in *Yartz*, applies retroactively. This is an important distinction that must be borne in mind when interpreting and applying *Auto Equity Sales*.

Ordinarily, judicial decisions overruling prior decisions operate retroactively. (*Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 978.)[6] Judicial decisions operate prospectively or their retroactive application may be limited only where there are "substantial concerns about the effects of the new rule on the general administration of justice" or the new rule "would unfairly undermine the reasonable reliance of parties on the previously existing state of the law. In other words, courts have looked to the hardships imposed on parties by full retroactivity, permitting an exception only when the circumstances of a case draw it apart from the usual run of cases." (*Id*. at p. 982; see also *Sierra Club v. San Joaquin Local Agency Formation Com*. (1999) 21 Cal.4th 489, 509.)

Here, there are no such concerns. Defendants in SVPA proceedings will suffer no hardships as a result of the retroactive application of the Supreme Court's decision in

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[6] As the *Newman* court noted, "One early rationale for retroactive application of decisions stemmed from the idea adhered to by Blackstone that 'judges do not "create," but instead "find" the law. A decision interpreting the law, therefore, does no more than declare what the law had always been. An overruling decision, under this theory, also does no more than declare the law—albeit in a more enlightened manner. From this declaratory nature of a judicial decision, the following rule emerges: An overruled decision is only a failure at true discovery and was consequently never the law; while the overruling one was not "new" law but an application of what is, and had been the "true" law. [Citation.]' [Citation.]" (*Newman v. Emerson Radio Corp., supra,* 48 Cal.3d at p. 979.) The court went on to observe that, "although the underlying 'Blackstonian' rationale has fallen into disrepute, the rule of retroactivity nonetheless has retained its vitality." (*Ibid*.)

Yartz, because no defendant in any SVPA proceeding could have justifiably relied to his or her detriment on the appellate court's decision in *Yartz*. The effect of that decision was to render evidence of pre-1983 no contest pleas and resulting convictions inadmissible in SVPA proceedings. But the decision could not have played any part in any SVPA defendant's decision to plead no contest to a crime before 1983. Indeed, SVPA defendants who pled no contest to crimes before 1983 could not have done so knowing their convictions could not be used as evidence of qualifying prior convictions under the SVPA, because the SVPA was not enacted until 1995. (Stats. 1995, ch. 763, § 3, p. 5922.)

Because the state Supreme Court's decision in *Yartz* applies retroactively, the appellate court's decision in *Yartz* was never the law. Instead, the "existing law" at the time defendant's motion to dismiss was first heard on September 15, 2003, and later renewed in June and July 2004, was what the Supreme Court *later* said it was when it issued its decision in *Yartz* on December 5, 2005. It follows that the trial court was not bound to follow the appellate court's decision in *Yartz* on September 15, 2003, when defendant's motion was first heard, even though the decision was published and therefore citable as authority on that date. (Cal. Rules of Court, rule 977(d).) Under *Auto Equity Sales*, lower courts are bound by the decisions of higher courts. (*Auto Equity Sales, supra*, 57 Cal.2d at p. 455.) But a lower court does not err in refusing to follow the

decision of a higher court *if* the higher court's decision is later overruled *and* the new decision operates retroactively.[7]

C. *The Admission of Testimonial Hearsay Statements in Police Reports and Other Documents Did Not Violate Defendant's Due Process Right to Confrontation*

Defendant contends that the admission of "testimonial" hearsay in police reports and other documents, through the testimony of the prosecution's experts and other witnesses, violated his Fourteenth Amendment due process right of confrontation. He argues that the restrictions on the admission of "testimonial" hearsay in criminal proceedings, as articulated in *Crawford v. Washington* (2004) 541 U.S. 36 [124 S.Ct. 1354, 158 L.Ed.2d 177] (*Crawford*), are a "necessary element" of the due process that is due to defendants in civil proceedings under the SVPA.

Under *Crawford*, the admission of "testimonial" hearsay statements by a declarant who is unavailable at trial violates a criminal defendant's Sixth Amendment right of confrontation unless the defendant had a prior opportunity to cross-examine the declarant -- even if the statements are admissible under the jurisdiction's rules of evidence and bear indicia of reliability. (*Crawford, supra,* 124 S.Ct. at pp. 1373-1374.) Statements

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[7] Defendant further claims that his due process rights under the federal and state Constitutions were violated, because the judge who denied his motion to dismiss, Judge Hanks, said he was doing so because dismissing the petition "could endanger a child." Defendant claims the judge's comment showed he was not impartial. (*People v. Brown* (1993) 6 Cal.4th 322, 332.) Although the comment was gratuitous and should not have been made, the context in which the comment was made shows it did not affect the trial court's decision to deny the motion. For the reasons set forth above, the trial court did not err in denying the motion.

obtained by police or other governmental officials during the course of an interrogation are testimonial. (*Ibid*.)

As defendant acknowledges, this court has held that *Crawford* does not apply in SVPA proceedings, because C*rawford* is based on the Sixth Amendment right of confrontation which applies only in criminal proceedings. (*People v. Angulo* (2005) 129 Cal.App.4th 1349, 1367-1368; *People v. Fulcher* (2005) 136 Cal.App.4th 41, 55.) Thus, defendant does not argue that *Crawford* applies in SVPA proceedings. Instead, he argues that defendants in SVPA proceedings are entitled to the "highest level" of due process and should therefore enjoy no fewer procedural protections than criminal defendants regarding the admissibility of "testimonial" hearsay.[8] For the reasons that follow, we disagree.

Defendants in SVPA proceedings have a *due process* right to confront and cross-examine witnesses; they do not have a Sixth Amendment right of confrontation. (*People v. Otto* (2001) 26 Cal.4th 200, 214 (*Otto*) and *In re Malinda S.* (1990) 51 Cal.3d 368, 383, fn. 16.) "'Once it is determined that due process applies, the question remains what process is due.'" (*Otto, supra,* at p. 210.) In SVPA proceedings, "due process . . . is not

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[8] For purposes of our discussion, we assume without necessarily deciding that all of the statements admitted through the testimony of the prosecution's experts and other witnesses were "testimonial." These include statements made by or attributed to Jeffrey and Joseph, the victims of defendant's 1980 and 1993 qualifying prior offenses; Kevin and Lloyd, the alleged witnesses to the offenses against Jeffrey; the two boys in whose presence defendant allegedly masturbated himself in a tree house in 1984; and Natalie, John, and Patrick, the three children who allegedly reported that defendant molested them in 1992.

measured by the rights accorded a defendant in criminal proceedings, but by the standard applicable to civil proceedings." (*People v. Superior Court (Howard)* (1999) 70 Cal.App.4th 136, 154.) In civil proceedings, including SVPA proceedings, "'[d]ue process requires only that the procedure adopted comport with fundamental principles of fairness and decency. The due process clause of the Fourteenth Amendment does not guarantee to the citizen of a state any particular form or method of procedure.' [Citation.]" (*In re Parker* (1998) 60 Cal.App.4th 1453, 1462.)

The measure of due process that is due in civil proceedings, including proceedings under the SVPA, is a complex determination that depends upon several factors: "(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail; and (4) the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official." (*Otto*, *supra*, 26 Cal.4th at p. 210.)

In *Otto*, the court weighed the foregoing factors and concluded that the admission of victim hearsay statements in probation reports under section 6600, subdivision (a)(3)[9]

[9] Section 6600, subdivision (a)(3) authorizes the admission of "documentary evidence" in SVPA proceedings to prove the defendant's qualifying prior convictions and "[t]he details underlying the commission of an offense that led to a prior conviction."

does not violate an SVP defendant's due process right of confrontation, provided that the statements bear "special indicia of reliability." (*Otto, supra*, 26 Cal.4th at pp. 210, 219.) The court also identified several factors a court may consider in determining whether the hearsay bears sufficient indicia of reliability to satisfy due process. (*Id*. at pp. 210-215.)

Defendant argues that *Otto* is no longer good law in light of *Crawford*, because *Otto* relies on "the same 'indicia of reliability'" analysis rejected in *Crawford*. Not so.

The court in *Crawford* rejected the previously settled principle that hearsay statements, whether testimonial or not, are admissible against a criminal defendant and do not violate the confrontation clause of the Sixth Amendment provided the statements bear "'adequate "indicia of reliability"'" as determined by a court. (*Crawford, supra*, 124 S.Ct. at pp. 1358, 1370.) In place of this principle, the court held that the Sixth Amendment confrontation clause requires not that testimony be deemed reliable by a court, but that its "reliability be assessed in a particular manner: by testing in the crucible of cross-examination." (*Id*. at p. 1370.) The court reasoned that the confrontation clause of the Sixth Amendment is a procedural, not a substantive, guarantee and that "[a]dmitting statements deemed reliable by a judge is [therefore] fundamentally at odds with the [procedural] right of confrontation." (*Ibid*.) Testimonial statements, including those taken in police interrogations, are of particular concern to the Sixth Amendment, because the "[i]nvolvement of government officers in the production of testimony with an eye toward trial presents unique potential for prosecutorial abuse . . . ." (*Id*. at p. 1367, fn. 7.)

Unlike criminal prosecutions, SVPA proceedings involve additional considerations which must be balanced against the defendant's due process right of confrontation. These include the four factors the *Otto* court considered in concluding that the admission of victim hearsay statements under section 6600, subdivision (a)(3) does not violate an SVP defendant's due process right of confrontation, provided the statements bear "special indicia of reliability."

Most significantly, the *Otto* court considered the government's interest in SVPA proceedings and the burdens that additional procedural requirements would entail. (*Otto, supra,* 26 Cal.4th at pp. 210, 214-215.) The *Otto* court said: "The express purpose of the SVPA articulates the strong government interest in protecting the public from those who are dangerous and mentally ill. Requiring the government to adduce live testimony from the victims could potentially impede this purpose. The SVP proceeding occurs at the end of the defendant's sentence, which may be years after the events in question. . . ." (*Ibid*., citing *People v. Superior Court (Howard), supra,* 70 Cal.App.4th at p. 155 [victim hearsay statements in probation report admissible at SVPA probable cause hearing].)

As *Otto* demonstrates, the due process that is due in SVPA proceedings is mitigated by the government's interest in the proceedings and the burden that additional procedural protections would entail. The same is not true of the procedural protections required under the confrontation clause of the Sixth Amendment under *Crawford*. Thus, the due process right of confrontation in SVPA proceedings is "less stringent" or affords fewer procedural protections than the Sixth Amendment right of confrontation. (*People v. Angulo, supra,* 129 Cal.App.4th at pp. 1367-1368.)

Further, *Crawford* neither expressly nor impliedly extended the Sixth Amendment right of confrontation to civil proceedings. Courts have repeatedly rejected the notion that the use of some criminal procedural protections in civil commitment proceedings transforms them into criminal prosecutions. (E.g., *Kansas v. Hendricks* (1997) 521 U.S. 346, 364-365 [117 S.Ct. 2072, 138 L.Ed.2d 501]; *Hubbart v. Superior Court, supra,* 19 Cal.4th at p. 1174, fn. 33; *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1410.)

Following *Crawford*, *Otto* remains good law. *Otto* continues to articulate the due process procedural protections that are due to defendants in SVPA proceedings regarding the admission of hearsay statements under section 6600, subdivision (a)(3). That is, victim hearsay statements in police and probation reports relative to qualifying prior offenses are admissible under section 6600, subdivision (a)(3), provided they bear "special indicia of reliability." (*Otto, supra,* 26 Cal.4th at p. 210.)

Here, defendant does not contend that the statements admitted against him at trial under section 6600, subdivision (a)(3) do not bear special indicia of reliability. Accordingly, we reject defendant's contention that the admission of hearsay statements in the police and probation reports, under section 6600, subdivision (a)(3), through the testimony of the prosecution's witnesses, violated his due process right of confrontation.[10] As to statements not admissible under section 6600, subdivision (a)(3),

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[10] In addition, defendant theoretically had a prior opportunity to confront and cross-examine the hearsay declarants by taking their depositions under the Civil Discovery Act, which applies in SVPA proceedings. (*People v. Angulo, supra,* 129 Cal.App.4th at p. 1368.) Moreover, defendant admitted at least some portion of the conduct underlying his qualifying prior offenses as a result of his 1980 and 1993 no

[footnote continued on next page]

defendant does not point to any statements other than those testified to by the People's experts, to support their respective opinions.

The admission of hearsay statements to support an expert opinion does not violate even the more stringent Sixth Amendment right of confrontation under *Crawford*. (*People v. Thomas* (2005) 130 Cal.App.4th 1202, 1209-1210.) *Crawford* itself states that the Sixth Amendment confrontation clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." (*Id*. at p. 1210.) Indeed, out-of-court statements offered to support an expert's opinion are not hearsay, because they are not offered for the truth of the matter asserted. Instead, they are offered for the purpose of assessing the value of the expert's opinion. (*Ibid*.) Moreover, any material -- including hearsay statements -- that is offered to support an expert's opinion must be reliable (*People v. Gardeley* (1996) 14 Cal.4th 605, 618; Evid. Code, § 801, subd. (b)) and is subject to exclusion if its probative value is outweighed by "'the risk that the jury might improperly consider it as independent proof of the facts recited therein.'" (*People v. Gardeley, supra,* at p. 619, citing *People v. Coleman* (1985) 38 Cal.3d 69, 91.)

That said, we are mindful of the potential prejudice that particularly detailed or aggravated hearsay statements pose to an adverse party when such statements are brought before the jury under the guise of supporting an expert's opinion. Apart from defendant's

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[footnote continued from previous page]
contest and guilty pleas and resulting convictions. (*Otto, supra,* 26 Cal.4th at p. 211; *People v. Whitney* (2005) 129 Cal.App.4th 1287, 1295.)

due process contention, he contends the trial court prejudicially erred in allowing the People's experts, Drs. Goldberg and Romanoff, to testify to excessive or particularly detailed hearsay statements. He argues that Drs. Romanoff and Goldberg were impermissibly allowed, over his objections, to testify on direct examination to details from arrest reports generated in 1980, 1984, and 1992.

As our state Supreme Court has explained, "'[a]n expert may generally base his opinion on any "matter" known to him, including hearsay not otherwise admissible, which may "reasonably . . . be relied upon" for that purpose. [Citations.] On direct examination, the expert may explain the reasons for his opinions, including the matters he considered in forming them. *However, prejudice may arise if, "'under the guise of reasons,'" the expert's detailed explanation "'[brings] before the jury incompetent hearsay evidence.'"*' [Citations.] In this context, the court may '"exclude from an expert's testimony any hearsay matter whose irrelevance, unreliability, or potential for prejudice outweighs its proper probative value."' [Citation.]" (*People v. Catlin* (2001) 26 Cal.4th 81, 137, italics added.)

As this court earlier explained, "While an expert may state on direct examination the matters on which he relied in forming his opinion, he may not testify as to the details of such matters if they are otherwise inadmissible. [Citations.] The rule rests on the rationale that while an expert may give reasons on direct examination for his opinions, including the matters he considered in forming them, he may not under the guise of reasons bring before the jury incompetent hearsay evidence. [Citation.] *Ordinarily, the use of a limiting instruction that matters on which an expert based his opinion are*

admitted only to show the basis of the opinion and not for the truth of the matter cures any hearsay problem involved, but in aggravated situations, where hearsay evidence is recited in detail, a limiting instruction may not remedy the problem. [Citations.] The court is not required to give such limiting instructions *sua sponte*." (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 788-789, italics added; see also *People v. Coleman, supra,* 38 Cal.3d at p. 81.)

Dr. Romanoff testified that defendant's 1980 conviction was a qualifying prior offense. On direct examination, he said, "I'm going to refer to the report. I believe he was convicted for both lewd and lascivious acts against a child under the age of 14 and oral copulation. [¶] . . . [¶] My understanding is he was six years old . . . . [¶] . . . [¶] In the arrest records from that case, the child reported that Mr. Reynolds put his mouth on his penis, that he also reported that Mr. Reynolds touched his penis with his hand and had him touch Mr. Reynolds'[s] -- he touched Mr. Reynolds'[s] penis."

Regarding the 1984 tree house incident which was not alleged to be a qualifying prior offense, Dr. Romanoff testified that, based on an arrest report from the 1984 incident, "Mr. Reynolds reportedly came into a -- what's described as, you know, a tree house-kind of situation. There were -- initially, there was one boy in the tree house. Then he was joined by another boy. While in the tree house, both boys reported that Mr. Reynolds unzipped his fly, took his penis out, and began masturbating himself to the point of ejaculation." Dr. Reynolds also testified that the 1984 tree house incident, and the 1992 incidents involving Natalie, John, and Patrick which did not result in

convictions, supported his opinions that defendant had a mental disorder and was likely to reoffend.

Dr. Goldberg testified on direct examination that, after he had reviewed the police reports and probation reports concerning the 1980 incident, "What happened in this 1980 crime according to the records is that Mr. Reynolds was in a park with a five- or six-year-old boy [Jeffrey], pulled down the boy's pants, started fondling his penis, and then had to place the boy's hand on his own penis, that is, Mr. Reynolds'[s] penis, and started having the boy fondle Mr. Reynolds'[s] penis. The boy stated he wanted to go. Mr. Reynolds said, 'Wait a minute,' held the boy down, and then orally copulated the boy." This was reported by the victim, Jeffrey.

Dr. Goldberg also testified concerning what Jeffrey's older brother, Lloyd, told the police, that being, "Mr. Reynolds had been known for several years -- actually, a couple of years, to be masturbating in front of boys in the neighborhood at the park." Based on a 1984 police report, Dr. Goldberg also testified about the tree house incident. And, based on a 1992 record, Dr. Goldberg testified that "Mr. Reynolds was operating some type of motorized cart. And he took this six-year-old boy [Joseph] in the cart for a -- I guess a trash area and orally copulated the boy approximately seven times. He also, on two occasions -- he had a plastic penis or dildo, and put some Vaseline or some lubricant on the dildo and placed it inside the boy's anus on two occasions." Dr. Goldberg also testified to the 1992 incidents involving Natalie and John. In conclusion, Dr. Goldberg opined that the 1980 incident involving Jeffrey and the 1992 incident involving Joseph constituted qualifying prior convictions. Regarding all of the incidents, he opined that

the age of the victims supported his opinion that defendant suffered from pedophilia and was attracted to prepubescent children.

Under section 6600, subdivision (a)(3), "[t]he existence of any prior convictions may be shown with documentary evidence. *The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence*, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health." (Italics added.) As interpreted by *Otto*, section 6600, subdivision (a)(3) is a hearsay exception for victim hearsay statements, including multiple level victim hearsay statements, when offered to prove a qualifying prior conviction. (*Otto, supra,* 26 Cal.4th at pp. 207-209.)

Here, defendant's alleged qualifying prior convictions were based on the 1979 incident involving Jeffrey and the 1992 incident involving Joseph. From the record, it appears that the hearsay statements testified to on direct examination by Drs. Romanoff and Goldberg relative to these incidents came from the victims. Thus, the trial court properly overruled defendant's hearsay objections to both experts' testimony concerning the underlying details of these incidents. (§ 6600, subd. (a)(3).)

Defendant also objected, however, to both experts' placing before the jury details of the 1984 tree house incident and to Dr. Goldberg's testimony about (1) Lloyd's statements that defendant had been masturbating in front of boys in the neighborhood for approximately two years before he molested Jeffrey, and (2) the 1992 incidents involving Natalie and John. As defendant properly points out, none of this testimony was

admissible under section 6600, subdivision (a)(3). And, as discussed *ante*, an expert may not testify on direct examination to inadmissible hearsay under the guise of setting forth the reasons for his or her opinion. (*People v. Catlin, supra*, 26 Cal.4th at p. 137; *Grimshaw v. Ford Motor Co., supra*, 119 Cal.App.3d at p. 789.)

To the extent that the details of these incidents were not otherwise admissible, the experts should not have been allowed to testify to the specifics of the underlying conduct under the guise of supporting their opinions. In saying this, we are mindful that in situations where the recitation of the underlying facts is not aggravated, a limiting instruction will generally cure the hearsay problem. Although we find error, as discussed below we do not find it prejudicial.

D. *The Trial Court Abused Its Discretion in Allowing Dr. Romanoff to Opine on Certain "Legal Issues"*

Defendant contends the trial court prejudicially erred in allowing Dr. Romanoff to express his expert opinion on certain "legal issues." More specifically, defendant argues that Dr. Romanoff should not have been allowed to testify, over his objections, that (1) defendant had two "qualifying prior convictions" for "sexually violent offenses" involving "substantial sexual conduct," (2) defendant was likely to commit future "predatory" "sexually violent offenses;" and (3) defendant's 1992 acts involving Natalie, John, and Patrick could have resulted in qualifying prior convictions.

We agree the trial court abused its discretion in allowing Dr. Romanoff to render his expert opinion on these issues, over defendant's objections. In testifying on these issues, Dr. Romanoff effectively instructed the jury on the law and on how the law should

be applied. As such, Dr. Romanoff's testimony invaded the provinces of the trial court and jury, and lacked foundation in his experience and expertise as a forensic psychologist. However, we find no prejudicial error.

1. Applicable Law

Expert opinion testimony is limited to an opinion that is "[r]elated to a subject that is sufficiently beyond common experience that [it] would assist the trier of fact." (Evid. Code, § 801, subd. (a).) An otherwise admissible expert opinion is not "objectionable" because it embraces an ultimate issue to be decided by the trier of fact. (Evid. Code, § 805.) But, notwithstanding Evidence Code section 805, "an 'expert must not usurp the function of the jury . . . .'" (*Summers v. A. L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1183, citing *People v. Humphrey* (1996) 13 Cal.4th 1073, 1099.)

"Expert opinions which invade the province of the jury are not excluded because they embrace an ultimate issue, but because they are not helpful (or perhaps too helpful). '[T]he rationale for admitting [expert] opinion testimony is that it will assist the jury in reaching a conclusion called for by the case.'" (*Summers v. A. L. Gilbert Co., supra,* 69 Cal.App.4th at p. 1183.) But "when an expert's opinion amounts to nothing more than an expression of his or her belief on how a case should be decided, it does not *aid* the jurors, it *supplants* them." (*Ibid*.) "There is no necessity for this kind of evidence; to receive it would tend to suggest that the judge and jury may shift responsibility for decision to the witnesses." (*Id*. at pp. 1182-1183.)

Still, "[a] bright line cannot be drawn to determine when opinions that encompass the ultimate fact in the case are or are not admissible." (*People v. Killebrew* (2002) 103

Cal.App.4th 644, 651.) In *People v. Wilson* (1944) 25 Cal.2d 341, 349, the court said: "There is no hard and fast rule that the expert cannot be asked a question that coincides with the ultimate issue in the case. '*We think the true rule is that admissibility depends on the nature of the issue and the circumstances of the case,* there being a large element of judicial discretion involved. . . . Oftentimes an opinion may be received on a simple ultimate issue, even when it is the sole one . . . because it cannot be further simplified . . . .'" (Italics added.)

Similarly, when an expert's opinion amounts to nothing more than a lecture on the law, it usurps the duty of the trial court to instruct the jury on the law. "In our system of justice it is the trial court that determines the law to be applied to the facts of the case, and the jury is 'bound . . . to receive as law what is laid down as such by the court.' [Citation.]" (*In re Stankewitz* (1985) 40 Cal.3d 391, 399.) Expert testimony that effectively instructs the jury on the law "results in no more than a modern day 'trial by oath' in which the side producing the greater number of lawyers [experts] able to opine in their favor wins." (*Downer v. Bramet* (1984) 152 Cal.App.3d 837, 842.) Another "'danger is that the jury may think that the "expert" . . . knows more than the judge—surely an inadmissible inference in our system of law.'" (*Summers v. A. L. Gilbert Co.*, *supra,* 69 Cal.App.4th at p. 1181.)

Furthermore, expert testimony that usurps the functions of the judge or jury is inadmissible under Evidence Code section 801, because it lacks foundation in the expert's professional field. (See *Kotla v. Regents of University of California* (2004) 115 Cal.App.4th 283, 291.) "[T]he courts have the obligation to contain expert testimony

within the area of the professed expertise, and to require adequate foundation for the opinion." (*Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1523.)

2. Expert Testimony Regarding "Qualifying Prior Convictions"

Defendant first argues that Dr. Romanoff should not have been allowed to testify, over his objections, that defendant had two "qualifying prior offenses" and had engaged in "substantial sexual conduct." He argues that Dr. Romanoff's testimony in this area usurped the functions of the trial court and the jury, and exceeded the proper scope of Dr. Romanoff's expertise. We agree.

A "[s]exually violent predator" is defined as "a person who has been convicted of a sexually violent offense against two or more victims . . . ." (§ 6600, subd. (a)(1).) The phrase "qualifying prior conviction" is synonymous with a "sexually violent offense." A "sexually violent offense" may, but does not necessarily, involve "substantial sexual conduct."[11] Whether a defendant has two or more "qualifying prior convictions" for purposes of the SVPA is an ultimate issue upon which the jury reaches a conclusion after following the trial court's instructions on the law. The trial court instructs the jury on the

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[11] A "[s]exually violent offense" includes any one of several acts listed in section 6600, subdivision (b) "when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person . . . ."

In the alternative, if one or more acts listed in section 6600, subdivision (b) was not committed by force or as otherwise described in that subdivision, but the victim of the offending act or acts was under age 14 and the offending act or acts involved "substantial sexual conduct," then the offense constitutes a sexually violent offense for purposes of section 6600. (§ 6600.1, subd. (a).) "'Substantial sexual conduct' means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender." (*Id.*, subd. (b).)

statutory definitions of the terms "sexually violent predator," "sexually violent offense," "substantial sexual conduct," and other terms defined in the SVPA. (CALJIC No. 4.19.)

On direct examination, the following transpired (the objections are omitted):

"Q. First of all, did you detail your opinion regarding the subject of whether or not Mr. Reynolds has two qualifying offenses under the sexually violent predator law.

"A. Yes, I did. [¶] . . . [¶]

"Q. All right. What -- can you tell us about whether or not you have an opinion as to whether Mr. Reynolds has two qualifying offenses? [¶] . . . [¶]

"A. I believe that he does.

"Q. . . . All right. Can you please tell us what the two qualifying offenses are in your opinion? [¶] . . . [¶]

"A. . . . I believe he was convicted for both lewd and lascivious acts against a child under the age of 14 and oral copulation. [¶] . . . [¶]

"Q. . . . Now, I want to ask you about that. In order to qualify as an offense under the sexually violent predator law, does force have to be used?

"A. It would depend on the committing -- it would depend on the specific sexually violent offense involved. For lewd and lascivious acts with a child under the age of 14, statute notes that if substantial conduct is present then that would qualify as sufficient grounds for a finding of making it a sexually violent offense.

"Q. And in this particular case, specifically, the 1979 arrest which resulted in the plea in '80, did that conduct with a six-year-old involve substantial sexual conduct? [¶] . . . [¶]

"[A.]: The statute defines substantial sexual conduct as consisting of the fondling of the penis of either the victim or the perpetrator, or oral copulation. There are actually some other criteria that it would also constitute substantial sexual conduct. But relevant to this situation, both the touching of the penis and the placing by Mr. Reynolds of his mouth on the victim's penis would both constitute substantial sexual conduct as defined within the statute.

"Q. . . . All right. So based on what you know about the 1979 conduct and the 1980 plea, that is a qualifying offense per -- for purposes of the sexually violent predator law; correct?

"A. In my opinion. [¶] . . . [¶]

"Q. . . . All right. So you did determine, just to be clear on this, that Mr. Reynolds met the criteria of having two sexually violent offenses . . . against two victims for purposes of the first criteria; is that right? [¶] . . . [¶]

"A. Yes."

These portions of Dr. Romanoff's testimony invaded the provinces of the judge and the jury, and lacked foundation in Dr. Romanoff's field of psychology. Dr. Romanoff was not qualified to render an opinion on what constitutes a "qualifying prior conviction," a "sexually violent offense," or "substantial sexual conduct." Furthermore, Dr. Romanoff effectively instructed the jury on the law and on how the law should be applied. The testimony did not *assist* the jury in determining whether defendant had two qualifying prior convictions. Instead, it was "too helpful." (*Summers v. A. L. Gilbert Co., supra,* 69 Cal.App.4th at p. 1183.) It risked creating an impression in the minds of

the jurors that Dr. Romanoff knew the law better than the trial court did, and was better qualified than the jury to determine whether defendant had two qualifying prior convictions.[12] Accordingly, the trial court abused its discretion in overruling defendant's objections to the testimony.

3. Expert Testimony Regarding "Predatory" Conduct

Defendant also claims that Dr. Romanoff, "seriously overreached himself when he told the jury that all of [defendant's] past transgressions were 'predatory' and, hence, strong evidence that any future sex crimes would also be 'predatory' as defined by the statute." (*People v. Hurtado, supra,* 28 Cal.4th at pp. 1186-1188 [SVP is a person likely to commit sexually violent "*predatory*" criminal acts].) Section 6600, subdivision (e) defines the term "predatory" as "an act . . . directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization."

The following transpired on direct examination (the objections are omitted):

"Q. . . . Dr. Romanoff, did you also come to an opinion when you were evaluating Mr. Reynolds as to whether or not, if he does commit sexually violent offenses in the future, whether or not they'll be predatory? [¶] . . . [¶]

"[A.]: "The statute requires that I also arrive at a finding that any future offense that might -- any future sexually violent offense that might occur would also need to be

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[12] In some factual settings, the issue of whether an act was "committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person" (§ 6600, subd. (b)), may well be the proper subject of expert opinion.

likely -- with the same definition of likely -- to be specifically predatory in nature. The statute defines predatory as . . . an offense . . . that involves either a stranger, a person of casual acquaintance with whom no substantial relationship exists, or a person who is specifically pursued for the primary purpose of sexual victimization. [¶] From my perspective, all of Mr. Reynolds'[s] past victims . . . were pursued in a predatory fashion. . . . [¶] . . . [¶]

"Q. All right. So the past victims were all pursued in a predatory manner, and it's your opinion that the future ones would be as well. [¶] . . . [¶]

"[A.]: Yes."

An expert psychologist may properly testify, based on his training and experience, that a defendant is likely to reoffend because the defendant's past conduct was directed toward a stranger or person of casual acquaintance, or because the defendant established a relationship for the primary purpose of victimization. But in the process of explaining the basis of his opinion, the expert may not instruct the jury on the law or render an opinion on the ultimate issue which is reserved for the jury. Here, in explaining what "the statute requires" and how "the statute defines predatory," Dr. Romanoff's testimony usurped the functions of the judge and jury, and exceeded the scope of his experience and expertise.

4. Expert Testimony Regarding Defendant's 1992 Acts

Lastly, defendant claims Dr. Romanoff was erroneously allowed to testify, without proper foundation, that if defendant had been convicted of any crimes based on his 1992 acts involving Natalie, John, and Patrick, he would have had three additional qualifying

prior convictions. As discussed, in 1993 defendant pled guilty to four counts of committing sexually violent predatory acts on Joseph in 1992. He was originally charged with committing lewd and lascivious acts on Natalie, John, and Patrick in 1992, but these charges were dismissed after he pled guilty to crimes involving Joseph.

Dr. Romanoff testified that, "While there were three other children involved in [the 1993] charges, none of those charges led to convictions. Had they led to convictions, they certainly would have been . . . qualifying victims." For the reasons explained *ante*, we agree that this testimony exceeded the scope of Dr. Romanoff's experience and expertise. Dr. Romanoff was not qualified to render an opinion that defendant's acts involving Natalie, John, or Patrick would have resulted in additional qualifying prior convictions.

Defendant further complains that Dr. Romanoff was simply mistaken in testifying that his 1992 acts involving John could have resulted in a qualifying prior conviction, because there was no evidence he touched John or caused John to touch him. Instead, the evidence showed that defendant pulled John's pants down. Thus, defendant argues, his acts involving John would not have resulted in a qualifying prior conviction because they did not involve force or substantial sexual conduct. (§§ 6600, subd. (b) & 6600.1, subd. (a).) To the extent defendant complains that Dr. Romanoff's conclusion lacked evidentiary support, it was a matter defendant should have explored on cross-examination.

5. Harmless Error

Although portions of Dr. Romanoff's and Dr. Goldberg's testimony were erroneously admitted, we cannot say there is a reasonable probability defendant would have realized a more favorable result had the testimony been properly restricted and more appropriately presented. (Cal. Const., art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836.) The trial court ultimately instructed the jury on the law, and defendant effectively admitted, through his own testimony, that he had two qualifying prior convictions for purposes of the SVPA, and that he had engaged in other conduct. In addition, the evidence showed that defendant cultivated relationships with all of his prior victims for the purpose of victimizing them. In sum, the evidence supporting the petition was extremely strong. We do not believe the evidentiary errors, taken individually or cumulatively, affected the result in this case.

DISPOSITION

The order of commitment is affirmed.

CERTIFIED FOR PUBLICATION

/s/ King
J.

We concur:

/s/ McKinster
Acting P.J.

/s/ Gaut
J.